UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2000/13
15 June 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-second session
Item 4 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Globalization and its impact on the full enjoyment of human rights

Preliminary report submitted by J. Oloka-Onyango and Deepika Udagama,
in accordance with Sub-Commission resolution 1999/8

CONTENTS

		Paragraphs	Page
Introduction and background		1 - 5	3
I.	REVISITING THE CONTESTED MEANINGS OF GLOBALIZATION	6 - 10	4
II.	THE INSTITUTIONAL CONTEXT OF INTERNATIONAL TRADE, INVESTMENT AND FINANCE	11 - 24	6
	A. The case of the World Trade Organization (WTO)	13 - 19	7
	B. Globalization and the international financial institutions (IFIs)	20 - 24	10

GE.00-14014 (E)

CONTENTS (continued)

		Paragraphs	Page
III.	GLOBALIZATION, EQUALITY AND NON-DISCRIMINATION	25 - 40	13
	A. The contours of global inequality and racism in the twenty-first century	27 - 29	14
	B. Globalization, gender relations and the situation of women	30 - 40	15
IV.	GLOBALIZATION AND THE APPLICABLE HUMAN RIGHTS FRAMEWORK	41 - 50	18
V.	THE ROLE AND PLACE OF UNITED NATIONS INSTITUTIONS AND MECHANISMS	51 - 61	22
VI.	CONCLUSIONS AND RECOMMENDATIONS	62 - 68	26

Introduction and background

1. In decision 2000/2 of the Commission on Human Rights recalling Commission resolution 1999/59 and taking note of resolution 1999/8 of the Sub-Commission on the Promotion and Protection of Human Rights, decided to approve the nomination of Mr. J. Oloka-Onyango and Ms. Deepika Udagama as Special Rapporteurs to undertake a study on the issue of globalization and its impact on the full enjoyment of all human rights, paying specific attention to the recommendations made by the Sub-Commission and the Commission so as to refine the focus and methods of the study.[1]

2. The appointment of the two Special Rapporteurs follows their joint working paper entitled "Human rights as the primary objective of international trade, investment and finance policy and practice" (E/CN.4/Sub.2/1999/11) and the working paper by Mr. J. Oloka-Onyango entitled "Globalization in the context of increased incidents of racism, racial discrimination and xenophobia" (E/CN.4/Sub.2/1999/8). It also builds upon the Sub-Commission's general concern with pursuing the realization of economic, social and cultural rights, and specific recent attention to the global ramifications of various non-State actors and their influence over the realization of such rights. Attention to the questions of extreme poverty, structural adjustment, the right to education, income distribution and the right to food - to mention only a few areas of concern - have also been subjects of examination, both within the framework of the Commission and the studies of the Sub-Commission. Finally, the establishment of a Working Group on Transnational Corporations (TNCs) illustrates the Sub-Commission's growing concern with this question.[2]

3. This preliminary report develops the broad conceptual parameters of the subject of globalization, while at the same time narrowing its focus to some of the practical issues involved in a critical consideration of the phenomenon. Recognizing that the subject of globalization is one of tremendous breadth and scope, the Special Rapporteurs have chosen to focus on a number of discrete subjects. Those subjects are either of such prominence that they cannot be ignored in a study of this nature, or they present particularly important conceptual and practical dimensions that merit immediate attention. Consequently, the Special Rapporteurs have selected two dominant themes for this preliminary report which we believe extend to the core of the phenomenon of globalization and its impact on the full enjoyment of human rights. Our first concern is with the institutional framework that has been developed to pursue the essential goals of globalization. Here we are primarily concerned with the multilateral institutions (MLIs), which include the Bretton Woods agencies[3] and the World Trade Organization (WTO),[4] and of course with their relationships to individual States within the international community. Secondly, we examine the related questions of equality and non-discrimination, with a particular focus on the effects of globalization on the situation of women.

4. The phenomenon of globalization has attracted more significant global attention than perhaps any other issue in recent memory.[5] From the slogans of corporate moguls and trade ministers, to television documentaries, radio broadcasts[6] and talk shows, globalization has captured the imagination of people the world over.[7] That fascination with the topic has obviously not left out its connections to human rights. Indeed, a recent documentary by the

Public Broadcasting Service (PBS) in the United States was entitled "Globalization and Human Rights".[8] According to the blurb advertising its screening, the docudrama would take viewers on a journey that:

> "Starts at a summit for corporate decision-makers - the World Economic Forum in the Alps of Switzerland - and travels deep into the gold mines of South Africa, then visits the controversial Shell oilfields of Nigeria and Nike shoe factories in Asia while examining an emerging conflict in a new world order between those making macroeconomic decisions and those struggling to cope with the impact of those decisions. At the core of the programme is the ongoing debate over whether or not human rights concerns should be linked to those policies."[9]

From the preceding analysis it is clear that globalization is no passing or ephemeral cloud.[10] It is also clear that the phenomenon is capable of any number of conflicting and sometimes even contradictory interpretations, particularly of a qualitative or value-laden nature. This is reflected in the existence of some bewilderment and a growing alarm over globalization's ramifications. Most importantly, there is little doubt that globalization has numerous implications for the regime of international law and practice with which we are most concerned in this study - the regime of international human rights.

5. The recent protests at Seattle in December 1999, and in Washington D.C. in April this year, brought the phenomenon of globalization into graphic relief in a manner in which no previous discussion of the issue has done.[11] The protests also brought to the fore the multifaceted nature of the phenomenon of globalization and its potential impact on a whole range of contemporary social, political, cultural and economic relationships. If nothing else, the protests demonstrated that in the foreseeable future, globalization will remain an issue of considerable importance to both intellectual debate and discussion as well as to the overall conduct of international relations, sustainable human development, and the promotion and protection of international human rights. However, precisely because the phenomenon has evoked responses of such a diverse nature, the Sub-Commission needs to carefully carve out the specific and distinct dimensions of the issue that most appropriately engage its mandate, and which extend and illuminate, rather than minimize or obscure its essential features.

I. REVISITING THE CONTESTED MEANINGS OF GLOBALIZATION

6. Since coming to the fore as one of the most talked-about issues of the late twentieth century and the new millennium, the phenomenon of globalization has captured world attention in various ways. From the information superhighway to the international trade in drugs and arms, to the phenomenal impact of MacWorld, Nike and the global media, the subject of globalization has come to concern all and sundry. At the core of most discussions of the issue is the extraordinary explosion of both technology and information, in ways that have considerably reduced the twin concepts of time and space. In particular, information and communications technology (ICT) has emerged as perhaps the most dominant force in the global system of production, albeit with significant ramifications in all other spheres of contemporary human existence.[12]

7. While recognizing the contribution of ICT and the attendant forces of the global economy to the emergence of globalization as we know it, too much has been made of the phenomenon of globalization in its economic dimensions. In a sense there is a new orthodoxy or ethos about the economic dimensions of globalization that exalts it above all other human values or phenomena, indeed even above the basic condition of human beings themselves.[13] The unfortunate consequence of this has been to denigrate (or mask) the social, cultural and especially the political roots and ramifications of the phenomenon. As Brazilian President Enrique Cardoso argues, it is a serious mistake to think of globalization as the result of market forces alone. "The boundaries within which the market operates are defined *politically*, in direct negotiations between governments in multilateral forums, such as the World Trade Organization. *The power game is always present in such negotiations*."[14] Moreover, it is a power game the rules of which are dictated by very few actors. However, its impact affects the vast majority. Consequently, understanding the political and other dimensions of the phenomenon of globalization is essential to the development of a rational and considered response to it.[15]

8. Because of globalization's multifaceted nature, it is essential to grasp the different motivating forces that are impelling these developments aside from the purely economic, and also to recognize the different directions from which they are coming. As Paul Streeten has pointed out, there is a globalization that can come "from above" in the form of multinational firms, international capital flows and world markets.[16] Intrinsic to this form of globalization is a growing legal and institutional framework within which the regimes of contemporary international trade, finance and investment are being conducted. The legal dimensions of that framework are best captured within the context of international economic law generally speaking, while the Bretton Woods MLIs and the WTO are the specific institutional mechanisms within which it is organized.

9. Another form of globalization can come from below (such as the environmental, women's and anti-nuclear movements, or in the case most relevant to this discussion, human rights struggles).[17] The human rights movement has long laid claim to a universalizing (indeed some would say a *globalizing*) mission. This is evident in the assertion that the regime of rights and freedoms established through the Universal Declaration of Human Rights - and the numerous other instruments that have since been promulgated in the same spirit - extend beyond the arena of purely national concern. The globalization-from-below activists have the potential to add a democratic dimension to the debates about globalization from above. In this way, globalization can be brought down from the rarefied and glorified atmosphere of corporate boardrooms, and home to the daily realities of ordinary human beings. Especially important, it can help them mobilize in resistance against the hegemonizing tendencies that globalization from above may present.[18]

10. Notwithstanding the above, a clear bias is manifest in the dominant modes of thinking that abound about globalization. Describing such thinking as "globalitarian" and "globalcentric", Arif Dirlik argues that such definitions of globalization are biased against both place and locality. Thus, the global is equated with "... capital, space, history and the power to transform ..." while the local is equated with "... place, labour, tradition and, not infrequently, women, indigenous people, peasants and others who are 'still attached to place'".[19] The implication is that the latter are marginal to the discourses on globalization, and that their knowledge and practices are unhelpful in the construction of a truly global contemporary world

Dirlik urges for review of this prejudiced approach to alternative visions of the manner in which the world can be constructed, and for mobilization of all the movements that feel they have a stake in the issue.[20] Indeed, there is a need for a recommitment to a bringing together of all the world's peoples around an agenda that does not seek to stifle the very productive and revolutionary innovations that technological development has unleashed.[21] However, it is essential that in so doing we do not forget basic and fundamental obligations that have been recognized and honoured for decades as essential to a wholesome human existence. Technology and economic development must be put to the service of humankind as a whole. In particular, such developments should not marginalize, discriminate or systemically deny access to the majority of the world's populace.

II. THE INSTITUTIONAL CONTEXT OF INTERNATIONAL TRADE, INVESTMENT AND FINANCE

11. Since the late 1990s and particularly at the present time, the role and place of international, rather than national forces and institutions has assumed a particularly prominent profile in the human rights debate. Indeed, one scholar has argued that "... the processes of militarism, economic restructuring, and trade and financial liberalization are the primary causes of human rights abuses".[22] In other words, it is no longer the State to which we should be paying attention, but rather to forces in the international arena. This assertion is only half-correct. There is little doubt that the State has been somewhat eclipsed by forces that operate in a fashion that pays little heed to issues of sovereignty, self-determination or statehood itself. However, such a view of the role of the State is not simply a shortsighted one; it also lets the State off too easily. As President Cardoso remarks, in the wake of globalization the role of the State has become much more complex today than at any other time:

> "In addition to its classic functions in the area of law enforcement, health, education, and foreign policy, the State must now meet increasing demands for more equity, more justice, a sound environment, and a greater respect for human rights. A more demanding society has to be matched by a more sophisticated State. A well-organized and efficient State will be better placed to meet those demands, many of them springing from globalization itself. Furthermore, the State must also be well equipped so that, in negotiating the rules within which globalization is to take place, national interests are preserved."[23]

Hence, rather than dismissing statehood as such it is more appropriate to view the phenomenon as having undergone a metamorphosis under the influence of various forces. Without doubt, among the most prominent of these forces can be found in the arena of international trade, investment and finance.

12. It is trite to point out that there are many dimensions to the debate on the directions that the regimes of international trade, investment and finance should assume. Neoliberal economists - whose voice is the dominant one in this discipline - argue simply that more is better.[24] Consequently, they contend that perceived barriers to the faster evolution of these international forces should be reduced both within the international context, as well as at the nation-State level. Within the framework of a variety of international and regional instruments, this vision of the world is receiving greater articulation by the day. It was the same vision that

informed the Organization for Economic Cooperation and Development (OECD) when it sought to introduce a Multilateral Agreement on Investment (MAI),[25] and it has been the vision of the Bretton Woods organizations in their various programmes since the 1980s. The issue is nevertheless not so black and white. As Lourdes Beneria and Amy Lind point out:

> "The benefits of trade may be both positive and negative, since its impact on economic activity produces both winners and losers. Therefore, any discussion of trade liberalization is not a simple matter of taking a "pro-trade" or an "anti-trade" position, rather, a substantive discussion requires an understanding of the nature of the process generated by trade liberalization and its likely consequences, so that appropriate policies may be developed and appropriate actions taken, particularly to compensate those negatively affected."[26]

From the preceding analysis, a number of questions emerge. Among the most prominent is whether the institutions designed to foster these policies pay heed to the possible negative effects - particularly in the human rights context - of their operations? We begin by examining the institution that is most often targeted whenever the issue of international trade and globalization crops up - the World Trade Organization (WTO).

A. The case of the World Trade Organization (WTO)

13. Despite being a relatively young international organization - having come into existence only in 1994 - the World Trade Organization (WTO) has attracted considerable intellectual and media attention. Following the Seattle protests at the meeting of world trade ministers, no other organization has been more closely associated with the phenomenon of globalization. Central to the ethos and practice of WTO is a set of principles that have provided the basic foundation for most contemporary developments associated with globalization. Among those principles we can cite free trade, open markets and tariff reductions. At the same time, the creation of WTO represented a veritable revolution not only in the scope of issues that were given attention under the trade regime created after Marrakech, but also with regard to the ramifications of failure to conform to that regime through its binding dispute-settlement mechanisms.[27]

14. The General Agreement on Tariffs and Trade (GATT), which the WTO succeeded, was provisional and only applied to goods, with the focus of the Agreement for most of its existence largely being border measures.[28] Among the new issues that came aboard following the Uruguay Round of talks in 1994 were services,[29] intellectual property rights (IPRs),[30] government procurement,[31] and investment measures.[32] In bringing these issues within the purview of the international trade-enforcement regime, not only did WTO assume tremendous powers, but it also raised several new issues vis-à-vis the relationship between the organization and individual States,[33] the broad questions of human rights, and the North/South geopolitical divide. For example, many developing countries take the demand to open their markets as a clear manifestation of Northern double standards, since the latter have consistently failed to open their own. In the trite observation of former World Bank Chief Economist Joseph Stiglitz, such exhortations often ring hollow:

> "As developing countries take steps to open their economies and expand their exports, they find themselves confronting significant trade barriers - leaving them,

> in effect, with neither aid nor trade. They quickly run up against dumping duties (when no economist would say they are really engaged in dumping), or they face protected or restricted markets in their areas of natural comparative advantage, such as agriculture or textiles."[34]

The truth is in fact much more acute. Indeed, the assumptions on which the rules of WTO are based are grossly unfair and even prejudiced. Those rules also reflect an agenda that serves only to promote dominant corporatist interests that already monopolize the arena of international trade.[35] The rules assume an equality of bargaining power between all the countries that engage in trade. They are also designed on the basis of a premise that ignores the fact that the greater percentage of global trade is controlled by powerful multinational enterprises. Within such a context, the notion of free trade on which the rules are constructed is a fallacy.

15. WTO has been described as the "... practical manifestation of globalization in its trade and commercial aspects".[36] A closer examination of the organization will reveal that while trade and commerce are indeed its principle focus, the organization has extended its purview to encompass additional areas beyond what could justifiably be described as within its mandate. Furthermore, even its purely trade and commerce activities have serious human rights implications. This is compounded by the fact that the founding instruments of WTO make scant (indeed only oblique) reference to the principles of human rights.[37] The net result is that for certain sectors of humanity - particularly the developing countries of the South - the WTO is a veritable nightmare.[38] The fact that women were largely excluded from the WTO decision-making structures, and that the rules evolved by WTO are largely gender-insensitive, means that women as a group stand to gain little from this organization.[39]

16. As is the case with other international institutions that deal with the international economy, WTO is afflicted by both processual and substantive problems. Superficially, WTO can be described as a democratic institution, because it adopts the principle of one member, one vote, its decisions are ostensibly based on consensus, and together these allow for more equitable outcomes.[40] Such superficial equality nevertheless masks a serious inequality in both the appearance and the reality of power in the institution. According to a recent International Federation of Human Rights (FIDH) report:

> "... whether one considers the dispute settlement procedures, the mechanisms for implementing agreements or the areas selected for negotiations, one comes to realize that the WTO structure is heavily tilted in favour of developed countries, such that developing countries are, de facto, kept away from decision-making mechanisms and from policy-making; similarly, their own specific problems are not sufficiently taken into account."[41]

In the deliberations and negotiations over further goals of trade liberalization, WTO has demonstrated a particular opacity in the face of the demand for transparency. At Seattle, despite warnings from developing country representatives (and the chants of protesters outside the conference hall),[42] representatives from the Northern countries persisted in developing a position in a process that excluded the majority of delegates. Unsurprisingly, the talks ended in deadlock.

and frustration.[43] The pattern continues, and is compounded by the fact that because of a lack of resources and personnel with the requisite expertise, developing countries are forever condemned to a marginal negotiating position within the WTO framework.[44]

17. Among the several issues that have caused concern for many developing countries is the attempt to forge a link between issues concerning trade, human rights, labour standards and the environment - particularly when they are couched in the terms of conditionality. The Havana Declaration of the Group of 77 that followed the South Summit held from 10 to 14 April 2000 was unequivocal in this respect, stating that it rejected "... all attempts to use these issues for resisting market access or aid and technology flows to developing countries".[45] The tying of trade to human rights in the fashion in which it has so far been done is problematic for a number of reasons. In the first instance, it too easily succumbs to the charge by developing countries of neo-colonialism.[46] Secondly, the commitment of Northern countries to a genuinely democratic and human rights-sensitive international regime is rendered suspect both by an extremely superficial rendering of the meaning of human rights,[47] and by the numerous double standards that are daily observed in the relations between countries of the North and those of the South. Thus, "human rights" conditionality when applied in contexts such as trade depends on a range of largely subjective elements extrapolated from the much broader human rights regime.[48] In other words, human rights are merely used as an opportunistic fulcrum to achieve the objective of liberalized markets. For example, why is there almost always never any linkage between the demands being made and the observation and respect for economic, social and cultural rights? The short answer is because many of the measures being pursued actually undermine the progressive realization of this category of rights. However, even when the linkage is made to civil and political rights, it is fraught with inconsistencies and national subjective interests predominate.

18. Many of the measures adopted by WTO have implications well beyond the question of international trade. Among the most controversial of those that WTO has thrown into the debate relates to the issue of patenting, especially of plant varieties and life forms.[49] According to Vandana Shiva:

> "The granting of patents covering all genetically engineered varieties of a species, irrespective of the genes concerned or how they were transferred, puts in the hands of a single inventor the possibility to control what we grow on our farms and in our gardens. At a stroke of a pen the research of countless farmers and scientists has potentially been negated in a single, legal act of economic highjack."[50]

The implications of such a measure are serious for the issue of food security, and its consequent relationship to the right to food. Furthermore, it represents outright piracy and appropriation of nature's bounty which has been designated for the whole of humanity and not for a privileged and technologically advanced few.[51]

19. At a minimum, the WTO needs to reform its processual mechanisms of deliberation so as to be more inclusive, and to allow for discordant (especially civil society) voices to be heard.

More fundamentally, however, it needs to review its approach to the substantive issue that it is supposed to tackle: the question of free trade. Again Prof. Stiglitz provides the most lucid examination of what would comprise a genuine regime of trade liberalization:

> "But trade liberalization must be balanced in its agenda, process and outcomes, and it must reflect the concerns of the developing world. It must take in not only those sectors in which developed countries have a comparative advantage, like financial services, but also those in which developing countries have a special interest, like agriculture and construction services. It must not only include intellectual property protections of interest to the developed countries, but also address issues of current or potential concern for developing countries, such as property rights for knowledge embedded in traditional medicines, or the pricing of pharmaceuticals in developing country markets."[52]

It is the above which WTO failed to do at Seattle, and has since failed to do in its aftermath. Following the Seattle Ministerial conference, the impression created by the WTO leadership, as well as by the countries of the North which had been the prime movers of the basic elements in the new WTO trade regime, was that there would be attempts made at reform. However, as one observer has pointed out, deliberations and pronouncements by the organization since Seattle do not appear to indicate much of a change of heart.[53] Thus, the problems of WTO are much larger than simply its approach to the substantive elements of its mandate. As in the case of OECD and MAI, WTO must radically review its mechanisms of operation, the role and place of both developing country participation and that of non-State actors such as NGOs, and its relationship to the United Nations system as a whole. In other words, what is required is nothing less than a radical review of the whole system of trade liberalization and a critical consideration of the extent to which it is genuinely equitable and geared towards shared benefits for rich and poor countries alike. WTO must take on board the many suggestions that have been made with respect to improving access and transparency at the organization, not only for the purposes of improving internal democracy, but also for the good of constructing a more equitable and genuinely beneficial international trading system.[54]

B. Globalization and the international financial institutions (IFIs)

20. As is the case with WTO, the twin Bretton Woods institutions - the World Bank and the International Monetary Fund (IMF) - have come under increased and intensified scrutiny. The April demonstrations represented a deep-seated resentment against two institutions that have in fact played a much longer and a critically more dominant role in shaping the essential characteristics of the global economy than WTO. Indeed, for many developing countries, the Bretton Woods organizations have not only more deeply penetrated their very existence and operation, but they have also had much more significant ramifications on basic human rights questions. Such questions extend from the right to self-determination and the observation of civil and political rights, to the ability of developing countries to progressively realize economic, social and cultural rights, especially in the arena of health, education and basic welfare.

21. Of the two institutions, the World Bank is generally recognized to have made more progress in attempting to address many of the criticisms against it, especially concerning its addiction to grandiose projects, its insensitivity to environmental, indigenous and minority

concerns and to the issue of gender.[55] It has tried to reach out to civil society and has declared that the alleviation of poverty is the main objective of the James Wolfenson presidency, which commenced in 1995. The Bank has also been active in designing mechanisms to address the issue of the debt burden, culminating in the highly indebted poor countries (HIPC) initiative. All these reforms have been undertaken in a bid to move away from what is known as the "Washington Consensus" - the set of shock-therapy measures of structural adjustment and economic liberalization that were applied in the 1980s and early 1990s in a bid to reform the macroeconomic policies of developing countries.[56] In the field of human rights, the Bank followed UNDP by issuing a set of guidelines linking its activities to what it perceived as its human rights obligations.[57] While the guidelines do indicate that the Bank is thinking about the issue, clearly it needs to do much more. The fact that the reforms do not go far enough is illustrated by the fact that both with respect to the Poverty Alleviation and HIPC initiatives, the frameworks of approach remain the same, i.e. conditionality and free market reforms.[58]

22. By contrast, the IMF has confined its steps towards reform to the release of information (on a comprehensive and well-organized Web site) including auditor's reports, and improving its systems of national and international oversight.[59] However, the Fund has been much more recalcitrant about being drawn into the debate about the human rights implications of its operations, arguing that its founding Charter mandates that it pay attention only to issues of an economic nature. The furthest the Fund has come in engaging any matter that may have human rights overtones is through a broad and rather nebulous document on "Good Governance".[60] Issued in 1997, the instrument is stated to be the IMF's response to the fact that "... a broader range of institutional reforms is needed if countries are to establish and maintain private sector confidence and thereby lay the basis for sustained growth".[61] Two points can be made about the Fund's Governance Guidelines. The first is that the purview of the Fund's concerns is extremely narrow, and confined to

> "... issues such as institutional reforms of the treasury, budget preparation and approval procedures, tax administration, accounting and audit mechanisms, central bank operations, and the official statistics function. Similarly reforms of market mechanisms would focus primarily on the exchange, trade, and price systems, and aspects of the financial system. In the regulatory and legal areas, IMF advice would focus on taxation, banking sector laws and regulations and the establishment of free and fair market entry".[62]

There is a heavy emphasis on corruption and the need for the establishment of transparent systems of operation within the countries that the Fund deals with. Although couched as "advice", for many developing countries IMF prescriptions are in fact edicts giving the latter little choice and almost no room for manoeuvre. The Guidelines also say nothing about the Fund itself, presumably because the systems and methods the Fund employs are beyond reproach. The second point - and perhaps the more critical one - is that throughout the guidelines there is absolutely no mention of the term "human rights". And yet, the linkage between macroeconomic policy and human rights issues has been firmly established.

23. Despite the fact that the Fund is well behind the Bank in its approach to human rights, a "democratic deficit" is apparent in both organizations. Take, for example, the issue of

leadership. As Helleiner and Oyejide point out, the governance practices of both institutions are "problematic". Our view is that they are in fact arcane and immoral, with the leadership of both institutions confined to a "royal family" of select individuals who must meet the criterion of regional - indeed ethnic - origin. Thus, "by custom" the President of the World Bank is from the United States, while the Managing Director of the Fund has always been a European. At the last changing of the guard, when long-serving Michel Camdessus prematurely resigned his position at the Fund last year, a slight impasse ensued when the United States initially backed Stanley Fischer as its candidate against the European choice.[63] One of the elements that was cited by the United States in coaxing developing (especially African) countries to root in Fischer's favour was that although a naturalized American, he was born in Zambia! Such practices demonstrate the duplicitous character of institutions that insist that the countries that borrow from them must be exemplars of what they describe as "good governance". Helleiner and Oyejide once again:

> "Although there may have been a rationale for such disproportionate voting arrangements and undemocratic management selection procedures within these institutions at the time of their foundation, it is difficult to defend them today - particularly when both institutions press borrowing countries to improve their own governance via conditions on their lending."[64]

The IMF continues to retain practices of intense secrecy, centralization of power and denial of responsibility even when crises can be traced to the policies that a country was forced to adopt on account of Fund conditionality. This was the case, to cite a recent example, when the East Asian countries were afflicted by currency shocks in the late 1990s. Indeed, the IFIs began by heaping much of the blame on the Governments involved. Adjectives such as "... poorly supervised", "poorly functioning," "badly-regulated," "corrupt" and "government-directed"[65] abound in the descriptions of the reasons for the crisis. It is as if the IFIs had nothing to do with the problems,[66] and indeed such comments represented a significant volte-face from what they had said about the very same countries only a few years earlier, describing them as "tigers", economic "miracles" and "impressive".[67] Although the IMF later admitted some connection between the crises and its policy prescriptions,[68] and conducted ad hoc evaluations of some of its programmes (with critical results),[69] there is no indication that the organization is willing to take the next most important step - accountability. Indeed, the fact that both in conception and practice, the policies of the Fund remain virtually the same as before the crisis illustrates that little has changed, either by way of conception, or genuine concern for the plight of the majority. It is still a case of counselling the swallowing of a bitter pill for the present with the promise of recovery and robust health in the future.[70]

24. Thus, the most critical question that emerges when discussing the issue of the responsibility of MLIs and kindred institutions is that of transparency and accountability. It is precisely for these reasons that the protesters in Washington assembled to condemn the Bank and the Fund.[71] As Smith and Naim argue:

> "The functional argument for transparency and accountability is equally important. No institution of authority now can long endure without the informed consent of those who

> are governed by it. Globalization itself is arming people with the information they need to give consent and, in some cases, the means to refuse it ... But lack of democratic processes is keeping international institutions weak ... People living in democracies are understandably reluctant to transfer allegiance and power to organizations less accountable (and even more remote) than their own national Governments."[72]

What is clear is that the institutional mechanisms of globalization have yet to seriously address the issue of human rights in a fundamental and democratic fashion - both with respect to their operations within countries, and also in relation to the internal make-up and functioning of their own institutions. If there is to be a genuine commitment to human rights in a holistic fashion, then these institutions must pay attention to both civil and political rights, as well as to economic, social and cultural rights. In addition, basic human rights principles - principles that can be translated into common parlance like transparency, accountability and participation - need to be applied to these organizations. The fact that the latter are still a problem was graphically demonstrated by the dramatic resignation of former Bank Chief Economist Joseph Stiglitz because of his open criticism of many of the Bank's and the Fund's policies, and for pushing too far in the direction of reform and democratization.[73] No other incident demonstrates so well that despite all the pretensions at reform, the IFIs still apply the old adage: "do as I say, but not as I do!".

III. GLOBALIZATION, EQUALITY AND NON-DISCRIMINATION

25. The preceding analysis allows us to turn to the issue of the relationship between globalization and equality and non-discrimination in a more concrete fashion. The two concepts are central to the corpus and ethos of human rights instruments and practice. The Universal Declaration and other human rights instruments are unequivocal in their declaration that all persons are equal, and that the right to non-discrimination is a basic and fundamental human right. The grounds upon which non-discrimination is prohibited are also clear, and have been expanded over time to accommodate new forms and expressions of an insidious practice that unfortunately is as old as humanity. Especially important are the prohibitions of discrimination based on race, colour, gender, religion and ethnicity. Indeed, with regard to certain of these prohibitions, it has been argued that they enjoy the status of *jus cogens*. As such, there can be no derogation from their observation even in times of war - the point in time at which derogations have been most easily justified.

26. It would be absurd to claim that globalization created inequality. Inequality and discrimination unfortunately existed long before globalization was recognized as a distinct phenomenon on the international scene. That globalization has caused global conditions of inequality and discrimination to worsen is clear even by simply examining the statistical data. UNDP uses the Internet as a prime indicator of the creation of and access to wealth today, and asks the critical question: Who is in the loop? The fact is that the "loop" of globalization has left out the vast majority of the world's citizenry. This means that not only is there further marginalization, but also increasing immigration in a world of ostensibly increasing plenty. If we ask a further question, viz. What is the colour, race or sex of those left out? The connection between globalization and the forces of inequality and discrimination become all the more graphic.

A. The contours of global inequality and racism in the twenty-first century

27. There are serious questions that emerge from an examination of the extent to which the phenomenon of globalization respects the basic human rights principles of equality and non-discrimination. The nature of contemporary global inequality is captured by an examination of the main elements that are touted as being the bedrock of the globalizing "revolution". This area is telecommunications. Unfortunately, according to Smith and Naim telecommunications are constricted by geography, gender, income and language.[74] These conditions are clear from a trite observation that has been made of the impact of globalization in one former Soviet-bloc country:

> "Globalization has not affected all Romanians with the same intensity or in the same way. Only cities in Romania (six of them) have airports that receive transborder flights. Most of the rural population lack cable television and have no awareness of the World Bank or the IMF. As of 1996, over half of [foreign direct investment] in Romania was placed in Bucharest alone. Largely owing to the expense of many transborder connections, globalization has gone furthest in Romania among the middle classes. A cellular phone and KFC fast food are too costly ... for a farmer in Transylvania or a shopkeeper in Târgu Frumos."[75]

The above statement points to one dimension of the globalization divide - the rural and the urban. That usually translates into another division: those who have and those without. In a continent like Africa where the vast majority of the populace is based in the rural area eking out a subsistence existence, the fact is that globalization has not improved things. Partaking in the processes of globalization, represented by the opening of free markets, the liberalization of trade barriers and the removal of protectionist barriers, is thus no guarantee that all will benefit.

28. There are clearly also problems concerning whether globalization is even of benefit to those who contribute a considerable amount to its success - workers around the world, legal and otherwise. Thus, while the countries of the developed part of the world clearly rely on migrant labour to sustain and operate their economies, the extent to which they either recognize or reward this category of person is debatable. In the trite observation of one writer, migrants (and especially domestic workers of various kinds) make up the "hidden state" in Europe and the industrialized countries of North America.[76] Paradoxically, increased integration - often touted as one of the major benefits of globalization - has not produced benefits for this very significant section of the population:

> "The drive towards a single European market, which has increased the mobility within the [Economic Community] of its Member States' citizens, has meant instead, increasing restrictions for migrant workers over the past few years. They cannot vote in local and national elections, in some countries they cannot form political organizations, and they are often not allowed to take jobs in the public sector. And yet, the economies of the EC members are increasingly dependent on this cheap, flexible labour force. They are an unprotected population, whose rights are often not addressed by the national legislation of either the receiving states or their states of origin ...".[77]

We may add that the vast majority of such people come from populations which are non-White - clearly demonstrating the racial and discriminatory aspects of this issue. That coloured minorities (whether indigenous to the country or immigrants) are statistically more often the targets of racist police attacks and discriminatory practices is thus clearly not accidental. Indeed, many people of colour in such countries view attacks of a racial nature as nothing out of the ordinary.[78]

29. Globalization has not only reinforced the traditional inequality between North and South, it has also reinforced inequalities within the North. And yet, those are the countries that are supposed to be the main beneficiaries of globalization.[79] Thus, in a comment on the situation of Black people in the United Kingdom in the 1990s, Stephen Small has argued that while many of the issues confronting people of colour remain the same, globalization has changed the form and added a higher degree of severity to the challenges.[80] Although his analysis was confined to the British situation, the following description could unfortunately be applied to an increasing number of countries in Europe and the Americas:

> "Race-related violence and other forms of abuse are escalating. Racialized discrimination in employment and education persists at significant levels, as does racialized intimidation by the police. The state and employers publicly and officially embrace equal opportunities, but by postponement, prevarication and delaying tactics, ensure it is not implemented!"

It is the paradox of growing wealth accompanied by growing inequality that is the bane of globalization. Nowhere is this paradox more apparent than in relation to the impact of the phenomenon of globalization on the general issue of gender relations, and on the plight of women in particular.

B. Globalization, gender relations and the situation of women

30. Among the distinct groups of society upon whom globalization's impact has been most telling, women clearly stand out. Few observers will deny that the general issue of gender relations globally, and the question of women's human rights specifically, has undergone significant transformation. Spurred on by the various international conferences, declarations and, most significantly, by the Convention on the Elimination of All Forms of Discrimination against Women, the respect for and recognition of women's human rights has made significant advances worldwide. Needless to say, while much has been achieved, there remains a considerable amount yet to be accomplished.[81] The phenomenon of globalization adds greater complexities to this quest, particularly in the economic arena, but also within the context of culture and politics.

31. Women have entered the workforce in large numbers in States that have embraced liberal economic policies. One United Nations survey concludes that "[i]t is by now considered a stylized fact that industrialization in the context of globalization is as much female-led as it is export led".[82] The overall economic activity rate of women for the age group 20-54 approached 70 per cent in 1996.[83] The highest absorption of women has been witnessed in the export-oriented industrial sector. This is especially the case in export processing zones (EPZs)

and Special Economic Zones (SEZs), and in those labour-intensive industries that have relocated to developing countries in search of cheap labour.[84] Investors have demonstrated a preference for women in the "soft" industries such as apparel, shoe- and toy-making, data-processing and semi-conductor assembling industries that require unskilled to semi-skilled labour.[85] Such industries are also labour intensive, service oriented and poorly paid. Thus, according to the Women's Environment and Development Organization (WEDO) women bear the disproportionate weight of the constraints introduced under the yoke of globalization.[86]

32. The process of economic liberalization has also spawned a huge growth in the informal sector and increased female participation therein. The participation of women in the informal sector is found to be typically higher than in the formal sector as it provides better opportunities of combining paid-work with household chores.[87] The reasons for the idealization of what is perceived to be a docile labour force are not hard to unearth. In many countries, workers in EPZs find unionization and collective bargaining nearly impossible. As part of the "race to the bottom" to attract foreign direct investment (FDI), some countries have either exempted EPZs altogether or relaxed existing national labour safeguards vis-à-vis EPZs.[88] Needless to say, such actions are in complete violation of International Labour Organization (ILO) standards encapsulated in the Declaration on Fundamental Principles and Rights at Work (1998).

33. The growth of the informal sector also means that traditional employment-related benefits and mechanisms of protection are not available to those employed in that sector.[89] Aside from the demand for cheap labour, the loss of jobs held by men and the consequent reduction in traditional family income has also contributed to the large influx of women into the labour market. Those women who cannot find factory work, or whose family circumstances do not make factory work possible, have had to seek work in the informal sector under labour conditions worse than in export-oriented industries. TNCs also find subcontracting and hiring part-time or temporary labour more cost-effective. The net result is poorer quality labour opportunities. Under these circumstances underemployment seems to be as big a problem as open unemployment.[90]

34. Deregulation and the privatization of State enterprises have been key components of structural adjustment programmes (SAPs) introduced by multilaterals as conditionalities attached to aid packages to developing countries. As Lim notes:

> "Labour market deregulation has been an important feature of structural adjustment programmes. There has been explicit deregulation, whereby formal regulations have been eroded or abandoned by legislative means; and implicit deregulation, whereby remaining regulations have been made less effective through inadequate implementation or systematic bypassing. Such deregulation has been based on the belief that excessive government intervention in labour markets - through such measures as public sector wage and employment policies, minimum wage fixing, employment security rules - is a serious impediment to adjustment and should therefore be removed or relaxed. Deregulation might mean more employment for women, but the danger is that such employment would tend to be on less favourable terms. The question is whether the market can be left almost entirely to determine the price of female labour and the conditions of female employment."[91]

The same author also points to the causal connection between the liberalization of trade and the preference for cheap labour - almost always provided by women - in the quest to realize comparative cost advantages.[92] Similarly, States around the world, but particularly in the geopolitical South have felt compelled to ease labour standards, modify tax regulations, and to generally relax standards of scrutiny and oversight in the bid to attract FDI in a mercilessly competitive global economic system. This "race to the bottom" has seen developing States engage in a perverse competition to provide the best investment environment by progressively lowering, *inter alia*, labour standards.[93]

35. The phenomenon of quantitatively increased employment opportunities accompanied by low-quality conditions of work is manifested especially in the EPZs. It is estimated that at the turn of the last century, 93 developing countries had EPZs, compared with 24 in 1976.[94] In a few countries such as Malaysia, the Philippines, the Republic of Korea and Sri Lanka it is the main employer of women. Women provide up to 80 per cent of labour requirements in EPZs.[95] Women also comprise the largest segment of migrant labour flows, both internally and internationally. Large numbers of rural women, often young and poorly educated, migrate to the metropolis in search of employment. In some countries this migration is largely to urban-based EPZs and SEZs. The vulnerability of these women makes them easy prey for exploitation, both economically and sexually. They are often willing to work under less suitable conditions of work than are acceptable to both men and to poor urban women.

36. In Asia, in particular, the migration of large numbers of female workers to the Middle East from, for example, West Asia, and South-East Asia, has had a strong impact both socially and economically. It has been estimated, for example, that the ratio of females to males who comprise migrant labour is 12:1 among Filipinos migrating to Asian destinations, 3:1 among Indonesians and 3:2 among Sri Lankans.[96] Many of these women work as domestic workers, seamstresses, nurses, assistants in retail shops and restaurants, and as entertainers (oftentimes in the sex industry).[97] While most women have the opportunity of earning higher wages than at home, labour conditions and mechanisms of both social and physical security in receiving countries seem to be perilous at best. More often than not, receiving States tend not to observe even minimal labour standards with regard to migrant workers, particularly women. Heavy economic dependence of the sending States on the inward monetary remittances of migrant workers has inhibited them from demanding fair labour conditions and protection from receiving States, thereby further weakening the position of such workers.[98]

37. Women in the agricultural sector have also been adversely affected by the promotion of export-oriented economic policies, trade liberalization and TNCs' activities in agriculture-related industries. Emphasis on export crops has displaced women workers in certain countries from permanent agricultural employment into seasonal employment. Subsistence farming has been severely affected in the new economic environment, leaving women farmers to seek seasonal employment.[99] Aside from the tenuous and low economic returns of seasonal agricultural employment, the Food and Agriculture Organization of the United Nations (FAO) has noted that the destruction of subsistence farming, increased industrial pollution and the loss of land to large commercial ventures, often financed by TNCs, have given rise to grave problems relating to food security and the health of the rural poor.[100]

38. Globalization also affects women who may not be integrated into the formal sector. Under the yoke of the SAPs that have been in vogue in most African countries since the early 1980s, women whose work is outside the arena of the globalized market in goods and services have been adversely affected. Rendered invisible by concepts such as "efficiency", "stabilization", and "cost-effectiveness", the labour of African women becomes the shock absorber of the processes of adjustment and the social costs that result therefrom. Unfortunately, the so-called social "safety nets" that have subsequently been introduced to "alleviate" the situation of these women have done little to fundamentally mitigate the crisis.

39. The United Nations Secretary-General has pointed to adverse labour conditions as a major factor contributing to the increased feminization of poverty.[101] The logical expectation that the demand for female labour will improve their bargaining position and drive up wages has not been realized. The very opposite appears to be taking place. Women are concentrated in "footloose" industries which can relocate their processes or components of production easily across frontiers into countries that provide a "better" investment environment, i.e. one that observes lower labour standards and more deregulation. The possibility of easy relocation for these light industries acts as a major disincentive to the raising of wages. This phenomenon affects labour forces in both developed and developing economies. It has been pointed out, for example, that after the adoption of the North American Free Trade Agreement (NAFTA), employers in the United States were able to stave off demands for higher wages by indicating the possibility of moving production offshore to an environment with a cheaper labour force.[102] In this context, it is important to pay heed to the call in the Beijing Platform for Action to review and modify macroeconomic policies and development strategies to ensure that they promote the rights of women.[103]

40. In dealing with the issue of poverty eradication, especially among women, the Secretary-General acknowledges that "[f]iscal policy should avoid compression of expenditure on health, education and skill formation, even under conditions of budgetary constraints ... At the international level, a main objective of development assistance should be to support national efforts for sustained human capital formation In the interested countries, the 20/20 initiative is particularly relevant in this regard."[104] The report goes on to emphasize the need for social safety nets to allow people weather adverse conditions created by slow growth and crisis (such as that in Asia), acknowledging that fast growth per se does not guarantee equitable distribution or social protection.[105] Interestingly, the IMF is among the institutions that have contributed to the compilation of the report, despite its largely deleterious role in fostering the Asian crisis in the late 1990s, and its only partial admission of culpability for the crisis.

IV. GLOBALIZATION AND THE APPLICABLE HUMAN RIGHTS FRAMEWORK

41. As is fairly apparent from the preceding discussion, the impact of the adverse consequences of globalization on the enjoyment of human rights is multidimensional; all aspects of human existence, be they political, economic, social or cultural, are affected. The negative impact on one dimension of human rights, e.g. economic rights, necessarily has a domino effect on other rights. This reality reinforces the principle enunciated in the Vienna Declaration and Programme of Action (1993) that human rights are "universal, indivisible, interdependent and interrelated".[106] Today, international human rights obligations have to be viewed through the

prism of this fundamental principle. The Charter of the United Nations recognizes the important linkages between the maintenance of international peace and security, the establishment of conditions of economic and social progress and development, and the promotion and protection of universal human rights.[107] A singularly important development is the imposition by the Charter of a legal obligation on Member States to take joint and separate action in cooperation with the Organization to promote, *inter alia*, higher standards of living, full employment and conditions of economic and social progress and development, and universal respect for, and observance of, human rights.[108] Action taken by Member States, either collectively or singly, to defeat this pledge is clearly a violation of the Charter, which under certain circumstances may amount to violations of principles of *jus cogens*.

42. The commitment of the United Nations to the indivisibility of human rights is reflected in the Universal Declaration of Human Rights. This instrument recognizes the right to an adequate standard of living, social security, the right to work and just and favourable conditions of work, and the right to education, in addition to traditional civil and political rights. Significantly, the Universal Declaration of Human Rights also recognizes the right of everyone to a social and international order in which the rights and freedoms set forth in it can be fully realized.[109] Furthermore, the Universal Declaration of Human Rights explicitly recognizes that nothing in it may be interpreted as implying a right to destroy any of the recognized rights.[110] The International Covenants on Economic, Social and Cultural Rights (ICESCR) and on Civil and Political Rights (ICCPR) further elaborate upon the foundation laid by the Universal Declaration of Human Rights. Both have been ratified by large numbers of States and are extremely important in pinpointing the specific legal obligations of State actors with regard to all aspects of human rights protection.

43. It is increasingly becoming clear that it is no longer tenable to draw a neat distinction between the nature of State obligations with regard to civil and political rights on the one hand, and economic, social and cultural rights on the other. United Nations human rights mechanisms have debunked the traditional view that civil and political rights entail only negative obligations, while economic, social and cultural rights give rise to the more complex issue of positive State obligations which require resources to be expended. The United Nations Human Rights Committee has interpreted certain rights guaranteed by the ICCPR as entailing positive obligations. This is clearly the case with regard to the right to life. In General Comment 6 (16) on article 6,[111] the Committee interpreted the right to life in a broad manner that requires States parties to take positive action, e.g. to reduce infant mortality, to increase life expectancy and to take measures to eliminate malnutrition and epidemics.[112]

44. The negative impact of globalization - especially on vulnerable sections of the community - results in the violation of a plethora of rights guaranteed by the Covenants. In particular, the enjoyment of fundamental aspects of the right to life, freedom from cruel, inhuman or degrading treatment, freedom from servitude, the right to equality and non-discrimination, the right to an adequate standard of living (including the right to adequate food, clothing and housing), the right to maintain a high standard of physical and mental health, and the right to work accompanied by the right to just and fair conditions of labour, freedom of association and assembly and the right to collective bargaining, have been severely impaired. Developing States are, more often than not, compelled by the dynamics of globalization to take measures that negatively impact on the enjoyment of those rights. The result is that States

cannot fulfil their international human rights obligations, even if they are desirous of improving the human rights situation in their countries. The critical question is the following: Can international economic forces that are engineered by both State and private actors be unleashed on humanity in a manner that ignores international human rights law?

45. The view that States or other actors cannot be held responsible for violations of economic, social and cultural rights is seriously being questioned as a flawed premise, both empirically and conceptually. Traditional interpretations of article 2 of the ICESCR view State obligations under the Covenant as being loosely drawn, permitting an absolute freedom to determine how and when States allocate resources for the realization of economic, social and cultural rights. This view is often entertained because of the inclusion in article 2 of provisions that a State party is required to take action with a view to "progressively realizing" the rights enumerated there "to the maximum of its available resources". However, in its General Comment on the nature of the States parties' obligations under the ICESCR,[113] the Committee on Economic, Social and Cultural Rights declared that concrete legal obligations are imposed by the Covenant under article 2. At a minimum, States parties are obliged to realize minimum standards relating to each of the rights utilizing available resources in an effective manner. The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997) drawn up by groups of experts, and increasingly gaining in currency before United Nations forums, have expanded on the General Comment. The Maastricht Guidelines recognize a triad of obligations - to respect, protect and fulfil.[114] As such, when State conduct falls short of these obligations, or fails to achieve the required level of realization of rights, it is responsible for *violating* the rights in the ICESCR.[115] Violations can occur either through commission or omission.[116] The jurisprudence of the Committee on Economic, Social and Cultural Rights that recognizes "minimum core obligations" on the part of States parties are echoed by the Maastricht Guidelines.[117] Such core obligations have to be fulfilled irrespective of resource or other constraints.[118] In determining whether a State party has utilized the "maximum of its available resources" attention shall be paid to the equitable and effective use of and access to available resources.[119] It is also significant that the Maastricht Guidelines recognize violations by States resulting from their failure to exercise due diligence in controlling the behaviour of non-State actors, such as transnational corporations, over which they exercise jurisdiction, when such behaviour deprives individuals of their economic, social and cultural rights.[120]

46. Both Covenants recognize the right to self-determination of peoples as being of fundamental importance to the enjoyment of other rights.[121] An important aspect of the right to self-determination is the right of peoples to exercise sovereignty over their natural wealth and resources. Article 1 (2) of both Covenants stipulates that "[i]n no case may a people be deprived of its own means of subsistence". Furthermore, the General Assembly adopted a resolution on "Permanent sovereignty over natural resources"[122] declaring, *inter alia*, that the aim of international cooperation is "... to further their [developing countries'] independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources ...".

47. International economic relations and the policies that drive those relations cannot in the name of laissez-faire economics be exceptions to the international rule of law. They are essentially subject to the dictates of international law, particularly those that recognize the

sovereign equality of nations, the right of self-determination of peoples and respect for human rights as cornerstones of modern international law. While States and multilaterals are directly obliged to comply with those principles, they are also obliged to ensure that private economic actors within their jurisdictions do not act in a fashion that abuses and blatantly violates those rights. According to Diller and Levy, referring specifically to the issue of coercive forms of child labour, where fundamental human rights norms are implicated, "... international law requires that treaty obligations, such as trade undertakings, be maintained only to the extent of consistency with these norms ...".[123] This is an obligation that extends beyond the arena of child labour alone, but can be applied to all facets that affect the nexus between trade and human rights law.

48. The right to development is of equal importance when examining the human rights implications of globalization. The international community through the General Assembly has recognized the right to development as an inalienable human right.[124] The United Nations Declaration on the Right to Development recognizes that the central focus of the process of development is the human person, who should be the active participant and beneficiary of the right to development.[125] Development itself is recognized as a multifaceted process that embraces the development of economic, social, cultural and political aspects of human life.[126] This position is affirmed by the widely respected Human Development Index advocated by UNDP as a means of realistically assessing levels of development. It is also affirmed by the Copenhagen Declaration and Programme of Action (1995) on social development.[127] The sum total of these positions is that development is envisaged as a process that enables the human person to fully enjoy all economic, social, cultural and political rights.

49. Gauging development purely on the basis of economic indicia is increasingly viewed with scepticism, as it does not reflect the ground realities, especially those relating to disparities in income distribution and living standards.[128] Such a position ignores the human dimension of development and the important linkage between development, human rights and peace. It overlooks the violent social and political forces that invariably are unleashed by extreme poverty and the denial of other human rights. If the forces of globalization are allowed to operate freely - overlooking the central premise of human-centred development - the spectre of massive levels of human rights violations resulting in grave social and political upheavals is a real one. The Copenhagen Declaration and Programme of Action, while recognizing the benefits of globalization, cautions:

> "At the same time, the rapid processes of change and adjustment have been accompanied by intensified poverty, unemployment and social disintegration. Threats to human well-being, such a environmental risks, have also been globalized. Furthermore, the global transformations of the world economy are profoundly changing the parameters of social development in all countries. The challenge is how to manage these processes and threats so as to enhance their benefits and mitigate their negative effects upon people."[129]

These very same sentiments are expressed in the Statement of the Committee on Economic, Social and Cultural Rights on globalization issued in May 1998.[130] It calls on the World Bank, the IMF and WTO to devise methods of measuring the impact of their policies on the enjoyment of economic, social and cultural rights (social monitoring) and to revise those policies accordingly.[131]

50. While the extant international legal framework imposes legal obligations to respect human rights mainly on States and intergovernmental organizations, it cannot be forgotten that the Universal Declaration of Human Rights calls on every individual and every organ of society to take action in order to secure the universal and effective recognition of the rights recognized by it.[132] The Universal Declaration clearly envisions the promotion and protection of human rights as a collective effort of both society and the State; it does not restrict the task to only State action. In fact, article 29 (1) declares that "everyone has duties to the community in which alone the free and full development of his personality is possible". It is not possible for private actors whose actions have a strong impact on the enjoyment of human rights by the larger society, therefore, to absolve themselves from the duty to uphold international human rights standards. It is even less acceptable for actors that have been created by States - such as the MLIs and WTO - to shirk their responsibilities under international law.

V. THE ROLE AND PLACE OF UNITED NATIONS INSTITUTIONS AND MECHANISMS

51. In recent years the United Nations has indicated its recognition of the need to provide leadership in dealing with the challenges posed by globalization. Secretary-General Kofi Annan has often reiterated the need to balance market forces with social needs if the world is to become a secure place for humankind. At the World Economic Forum held in Davos, Switzerland, in 1999, he articulated the need for a "Global Compact" to reap the best results of globalization, and in his message to the world trade ministers at the WTO meeting in Seattle he called for the need to pay heed to the gross inequalities in the global trading regime. Thriving markets, he said, can be guaranteed only if human security is secured. His most recent report to the General Assembly to mark the Millennium Summit (released in April 2000) is entirely devoted to the need to re-envision governance, both internationally and nationally, in the age of globalization. The new vision of governance, suggests the report, should take into account both the endless possibilities of globalization to improve human life and also the threats posed to human security. The report recognizes the centrality of human rights to people's expectations about the future role of the United Nations. Freedom from want, freedom from fear and ensuring a sustainable future are spelled out as the three main focal points of future United Nations action. Similarly, the United Nations High Commissioner for Human Rights has emphasized the need to make business human rights centred.[133] In her comment on Seattle, she stated that "[t]here can be no denying that human rights is a bottom-line issue. We need to see more companies adopting human rights principles and being held to account for putting them into action."

52. A survey of United Nations human rights mechanisms, however, demonstrates varying degrees of emphasis placed on the human rights implications of globalization.[134] On the whole, the Charter-based mechanisms have demonstrated a greater concern to place the issue of globalization at the centre of their agendas. The Economic and Social Council, the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights have all launched a number of initiatives to inquire into various aspects of the phenomenon of globalization and its impact on human rights. The Council has held discussions and consultations with multilaterals and specialized agencies on the impact of globalization on development and poverty.[135] The High Commissioner too has in recent years undertaken several initiatives to focus on issues such as poverty. Over the years, the Sub-Commission has underscored the need to emphasize the principle of the indivisibility of human rights, and has

focused on the importance of integrating economic, social and cultural rights into United Nations action in the field of human rights. Currently, the issue of indivisibility is situated squarely in the context of globalization. Aside from the present study, others on the right to food, access to drinking water, income distribution and the role of TNCs have been commissioned. As a result, mechanisms to address issues arising from the liberalization of economic activities have been proposed. A sessional working group on the working methods and activities of transnational corporations was set up at the fifty-first session of the Sub-Commission.[136] The establishment of the Social Forum, a proposal arising from the study on income distribution, concentrating mainly on economic disparities, is in the offing.[137]

53. Among the treaty-based human rights mechanisms, the Committee on Economic, Social and Cultural Rights has done the most in seeking to understand and monitor the impact of economic liberalization on its mandate. It has actively sought the inputs of multilaterals, specialized agencies and NGOs in developing its own position on the issue. Pursuant to a consultation with all those parties titled "Globalization and its impact on the enjoyment of economic, social and cultural rights", the Committee issued a statement on the subject.[138] In the statement, the Committee maps out its concerns over the negative impact of globalization on the enjoyment of economic, social and cultural rights, and calls on not only States but also multilaterals to pay enhanced attention to taking a rights-based approach to economic policy-making. Globalization per se is not viewed as a negation of human rights; rather, it is the primacy given to market forces without accompanying social safeguards that draws the attention of the Committee. These same concerns - in amplified form - are raised once again in the statement the Committee addressed to WTO Third Ministerial Conference in Seattle in November 1999. The Committee urged WTO members to adopt a human rights approach at the conference, recognizing the fact that "promotion and protection of human rights is the first responsibility of Governments".[139] The Committee also drew attention to the fact that in monitoring State compliance with the obligations under the ICESR, it is increasingly becoming aware of the extent to which international economic policies and practices affect the ability of States parties to fulfil their obligations under the Covenant.[140]

54. The Committee's recent General Comment on the right to food appears to deal with the issue of food security within the context of globalization.[141] Significantly, it draws attention to the responsibilities of private actors, aside from the obligation of States parties to appropriately regulate their conduct, in the realization of the right to adequate food. The comment goes on to stipulate that "[t]he private business sector - national and transnational - should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society".[142] Furthermore, it calls upon the IMF and the World Bank to pay attention to the protection of the right to food in drawing up lending policies, credit and structural adjustment programmes.[143] This approach by a treaty-based mechanism of also focusing on the responsibilities of multilaterals as well as private actors in protecting human rights is an extremely significant step in the current economic environment.

55. Most of the other treaty-based human rights mechanisms have increasingly shown concern over rising economic disparities that impact on their individual mandates. For example, in examining periodic country reports under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Committee has shown great concern over the

evidence of the feminization of poverty and the impact of economic policies on the rights of women.[144] However, so far the Committee does not appear to have taken the globalization "bull" by its horns, so to speak. The same could be said to be true of the Human Rights Committee. In General Comment No. 28 dealing with equality of rights between men and women, issues such as the feminization of poverty, declining social indicators and gender inequity in employment within the framework of globalization are not given much consideration. On the one hand, it is logical that it is the Committee on Economic, Social and Cultural Rights that should concentrate more on the issue of globalization, given its mandate. On the other hand, it is rather illogical for other human rights bodies not to pay equal attention to human rights issues arising from globalization in light of the proven principle of the indivisibility of human rights. Moreover, it is indisputable that today, as the Secretary-General points out in his report to the Millennium Summit, globalization is the single most important factor defining the quality of human existence. Unbridled economic liberalization has the potential to wreak havoc on human rights unless checked in a timely manner. It is therefore imperative that all human rights organs of the United Nations focus heavily on the human rights "fall-out" of free market forces and adopt appropriate mechanisms for dealing with resulting obstacles to the enjoyment of human rights, especially insofar as they relate to their respective mandates.

56. In further support of these measures, a number of United Nations specialized agencies have found occasion to address the question of globalization and its effect on their specific mandates. We can mention the United Nations Conference on Trade and Development (UNCTAD), the International Labour Organization (ILO), the Committee on the Rights of the Child (CRC) and the United Nations Development Programme (UNDP). The UNDP Human Development Report 1999 convincingly argues that reaping the benefits of a globalized economy cannot be done by merely forcing countries to open up their economies.[145] To make the most of those benefits there has to be a policy package. Governments have to ensure that sound policies for social development and protection, poverty eradication, income distribution and environmental protection are put in place, just as well-thought-out macroeconomic policies and institutions have to be established to ensure sound economic management. In the absence of that combination, sustained and sustainable development will remain illusory. It is also the case - as successive waves of financial crises have taught - that sound social policies have to be in place in order to absorb the shock of the vagaries of market forces.[146] The report also calls for a reorientation of global governance that ensures equity in international negotiations and that has as its central focus human development and human rights.[147]

57. The ILO has long engaged the phenomenon of globalization in a critical fashion. Just last year, it promulgated the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182), as a response to the effects of unbridled policies of economic liberation that have led to children being subjected to all forms of deleterious labour practices.[148] In a meeting with the World Bank in 1998, the Director-General of the ILO set out the reasons why the organization has an interest in the phenomenon of globalization:

> "We have a common interest in seeking to ensure that globalization is accompanied by steady growth in employment opportunities. This is the main means through which globalization benefits are transmitted to large numbers of

working people and their families. High rates of employment growth are essential for improving economic security and for achieving greater equity worldwide. Recourse to effective social dialogue, on this score too, has definite advantages, namely to explore what is feasible and realistic and to mobilize broad-based support for measures that have to be taken."[149]

58. An institution that has perhaps been greatly eclipsed in the debate about globalization but whose work has been fundamental to the United Nations coming to grips with the phenomenon is UNCTAD.[150] UNCTAD has been a consistent and incisive critic of the policies of economic liberalization pursued by the Bretton Woods organizations and offered the first critical reviews of the reasons for the Asian crisis that did not solely blame the Governments. Unfortunately, much of its work has not been taken up or integrated into the workings of the relevant organs of the United Nations system. Part of the problem may be that, as the head of the organization has often stated, UNCTAD lacks any negotiating authority, and also that its role was reduced to technical assistance, analysis and consensus-building.[151] Needless to say, at the UNCTAD X meeting in Bangkok in February this year, the organization's strengthened mandate on debt, finance and financial architecture as well as its positive engagement with civil society makes it a natural focal point within the United Nations system for further critical engagement with the issue of globalization.[152]

59. United Nations bodies and specialized agencies such as the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Environment Programme (UNEP) have all carried out work that has implications for the overall response by the United Nations to the phenomenon of globalization.[153] Although some agencies - like UNICEF with respect to the problem of the arsenic poisoning of wells in Bangladesh[154] - also have problems of accountability and transparency, there is a point at which they can engage collectively in order to arrive at a concerted and comprehensive inter-agency approach to the phenomenon of globalization.

60. It is abundantly clear that those human rights bodies and specialized agencies that have focused attention on the impact of globalization on human rights have been ably assisted by NGOs that monitor and are well versed in global economic trends. Those NGOs have been a driving force behind United Nations activities in this field, providing a sharper focus on relevant issues. The Committee on Economic, Social and Cultural Rights takes due cognizance of this fact and states that: "The political space that is opening up in the corridors of international policy making is largely a result of the spirited work of these NGOs."[155] The vital contribution of civil society has to be recognized and fostered in order for the United Nations to continue work on this issue.

61. Despite the clear concern manifested by the United Nations with respect to the various issues that surround globalization and that have various implications for the work of several aspects of the Organization, there are still many limitations on the extent to which the United Nations can comprehensively tackle the issue. Among the most obvious is the fact that it does not participate in the processes of negotiation and real decision-making concerning the processes of policy-making with respect to international trade, investment and finance. Secondly, some of the ways in which the United Nations and its agencies (like the UNDP) seek

to link up with big business and MLIs raise numerous concerns.[156] A danger exists of such linkages being exploited by the latter, while only paying lip-service to the ideals and principles for which the United Nations was created and to which it continues to be devoted. Moreover, because the actors who are being linked up with have considerably more financial and political clout, there is a danger that the United Nations will come out the loser.[157] As such, there is an obvious need for an a priori formulation of the basic principles on which such associations and arrangements are to be based, and for human rights issues to be clearly incorporated therein.

VI. CONCLUSIONS AND RECOMMENDATIONS

62. From the preceding analysis, it is fairly evident that the phenomenon of globalization, the processes and institutional frameworks through which it is propagated, and its multifaceted nature have numerous implications for the promotion and protection of all human rights. This implies that there is a need for a critical reconceptualization of the policies and instruments of international trade, investment and finance. Such reconceptualization must cease treating human rights issues as peripheral to their formulation and operation. In other words, there is a dire need for human rights - with a particular emphasis on questions relating to equality and non-discrimination - to be brought directly into the debate and the policy considerations of those who formulate the policies and operate the institutions that are at the forefront of the drive for the increased globalization of contemporary society.

63. There is a growing clamour - particularly from the main beneficiaries of globalization - that rules need to be established to govern the international economy, with a specific focus on questions such as copyright violations, trade sanctions, and protections for increased foreign investment. It is this desire that led to the articulation of the Washington Consensus and structural adjustment programmes (SAPs) by the Bretton Woods organizations, the attempt to forge ahead with a Multilateral Agreement on Investment (MAI) in the OECD, and ultimately to the creation of WTO. Unsurprisingly, most such demands emanate from those who are already benefiting to a considerable degree from the current inequities in the global economy.[158] However, what is required is a more balanced approach, which ensures that human rights principles are integrated into the rule-making processes from the outset. The primacy of human rights law over all other regimes of international law is a basic and fundamental principle that should not be departed from. In seeking to achieve this objective critical challenges must be made to the dominant neoliberal economic framework of analysis, and in particular to the measures of austerity and punitive conditionality that have been the modus operandi of the existing system. Further reviews of existing debt relief and poverty eradication measures must also be undertaken from a human rights perspective.

64. There can be little doubt that the involvement of women in the elaboration of the regimes governing international trade, investment and finance has been rather abysmal. Indeed, women continue to be a grossly under-represented group within institutions such as WTO and the IMF, and even the World Bank. Furthermore, the attempts to conduct gender-related analyses of the activities of such organizations have been few and far between - especially from within. Consequently, there is a very great need to "engender" the institutional frameworks within which the processes of globalization are being elaborated. Furthermore, there is an urgent need to conduct gender-specific analyses of the impact of globalization in its trade, investment and financial aspects.

65. Quite clearly, the rules of international trade, investment and finance require urgent reform. At the same time, if this study has shown nothing else, it is that the institutions that currently make the rules that govern the processes of globalization as we know them also require reform.[159] Such reform must deal with issues concerning participation and involvement, transparency in decision-making, negotiations, dispute settlement, and trade and investment policy reviews. Issues of leadership, recruitment and inclusiveness must likewise be addressed. The running question that needs to be asked in such a review is: To what extent do existing practices correspond to the basic tenets of human rights law?[160] Furthermore, mechanisms for conducting critical in-house and external evaluations and complaint investigations (ombudspersons) should be established. Central to these processes of reform must be the numerous non-State and civil society voices that have been at the forefront in articulating the grievances of humanity towards the unbridled spread of a global system of economic ordering that has produced few benefits for the majority of humankind.

66. In the same way that the Sub-Commission has embarked upon a process of formulating a draft code of conduct for TNCs, it is time that an attempt was made to formulate guidelines that elaborate the basic human rights obligations of the main actors within the context of globalization. These guidelines would be applied not only to the various regimes of international trade, investment and finance, but also to the institutional arrangements within which these regimes are housed. These include the Bretton Woods organizations, WTO and regional organizations such as the OECD, the Asian and African Development Banks (both known as ADB), and the host of other agencies that have been created to deal with the promotion and regulation of international and regional trade, investment and finance. Part of this process can include the elaboration of a framework within which these actors can begin to conduct human rights impact assessments (HRIAs) in order to be able to assess the human rights implications of their activities before they execute them.

67. Despite the fairly active engagement of a number of United Nations bodies and specialized agencies with the issue of globalization, much more can still be done. In the first instance, those organizations which appear not to have been as deeply involved in the issue (and particularly with its human rights implications), such as the World Intellectual Property Organization (WIPO) and the World Health Organization (WHO), should begin to address the issue in a more critical and far-reaching manner. Furthermore, there should also be more cross-agency dialogue, both within the United Nations system and across institutional boundaries with the MLIs and WTO. The basic premise for such dialogue must be the elaboration of the fundamental human rights principles that underpin their activities in the arenas of international trade, investment and finance.

68. Given that the parameters of the subject of globalization remain very wide, and that even within the context of this preliminary report there are numerous issues that require deeper consideration, it is recommended that the Special Rapporteurs remain seized of the subject and prepare a final report for submission to the Sub-Commission and the Commission at their next sessions.

Notes

[1] This paper has been written with the assistance of the Centre for the Study of Human Rights, the University of Colombo, the Nadesan Centre and Shalini Perera, all of Colombo, Sri Lanka. It has also benefited from interaction with the pioneer students on the joint African LL.M in Human Rights and Democratization programme. Rose Ssengendo at Makerere University, Uganda, and Margot Solomon of Minority Rights Group (MRG), London, also provided valuable materials and research support for the study. The authors express their gratitude.

[2] Sub-Commission decision 1999/102. The Special Rapporteurs are aware that no discussion of globalization can omit consideration of the issue of TNCs - regarded by many to be the "engines" of globalization. In order to avoid duplicating the work of the Working Group, however, this preliminary report does not cover TNCs in any great depth.

[3] The Bretton Woods agencies comprise the International Monetary Fund (IMF) and the World Bank family, made up of the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), the International Development Agency (IDA), and affiliated organizations such as the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for the Settlement of Investment Disputes (ICSID). It is interesting to note that the attempt to create an international trade organization (ITO) as part of the Bretton Woods agencies in the post-war period was unsuccessful, which is why the world was stuck with the much looser General Agreement on Tariffs and Trade (GATT). See, John H. Jackson, "Fragmentation or Unification Among International Institutions: The World Trade Organization", New York University International Journal of Law and Politics, vol. 31, No. 4 (1999), at pp. 826-827.

[4] See Agreement establishing the WTO, signed at Marrakech, Morocco, 15 April 1994. Also see resolution 1999/30 of the Sub-Commission.

[5] This may be because - in the words of one scholar - globalization "...involves arguably the most fundamental redesign of the planet's political and economic arrangements since at least the Industrial Revolution". See, Jerry Mander, "Facing the Rising Tide", in The Case Against the Global Economy: And for a Turn Toward the Local, (Jerry Mander and Edward Goldsmith, eds.) Sierra Club, San Francisco, 1996, at p. 3.

[6] Last year's Reith Lectures presented by Sir Anthony Giddens of the London School of Economics were exclusively devoted to the issue. The 2000 lectures were devoted to Sustainable Development with obvious links to the topic. See especially Vandana Shiva, "Globalization and Poverty" (accessed on 13 May 2000 at: http://news.bbc.co.uk/hi/english/static/events/reith_2000/lecture5.stm).

[7] The UNDP Human Development Report 1999 was focused on globalization, and at the Group of 77 (G-77) South Summit in April 2000, a significant portion of the meeting and the final declaration were devoted to the issue. See, UNDP, Human Development Report 1999, and the Havana Programme of Action (accessed on 21 May 2000 at: http://www.g77.org/summit/ProgrammeofAction_G77Summit.htm).

[8] See, "Globalization and Human Rights", (accessed on 6 May 2000 at: http://www.pbs.org/globalization/home.html).

[9] Ibid.

[10] One scholar has even gone so far as to argue that globalization is a new human right! See Michael D. Pendleton, "A New Human Right: The Right to Globalization", Fordham International Law Journal, vol. 22, No. 4, pp. 2052-2095.

[11] For a good analysis of the impact of the Seattle conference see, Miloon Kothari and Peter Prove, "The WTO's 3rd Ministerial Conference: Negative Impressions Mask Positive Developments in Seattle", Economic and Political Weekly (8 January 2000).

[12] See Arie M. Kacowicz, "Regionalization, Globalization, and Nationalism: Convergent, Divergent, or Overlapping Alternatives?".

[13] This point has come to the fore in the debate about genetic engineering, and especially in the discussion over the issue of patenting life forms such as "Dolly" the artificial sheep. It was a point taken up by the Prince of Wales and the discussants in the final round-table discussion of the 2000 Reith Lectures. See, http://new.bbc.co.uk/hi/english/static/events/reith 2000/lecture6.stm).

[14] See Fernando Enrique Cardoso, "Globalization and International Relations: Public Address to the South African Institute of International Affairs", Johannesburg, 26 November 1996, at pp. 5-6.

[15] This point is made very clearly by Bonnie Campbell, "Canadian Mining Interests and Human Rights in Africa in the Context of Globalization", International Center for Human Rights and Democratic Development (ICHRDD) Working Paper (accessed on 6 May 2000, at http://www.ichrdd.ca/PublicationsE/globAfrCamp.html).

[16] Paul Streeten, "Globalization and its Impact on Development Co-operation", Development, vol. 42, No. 3 (September 1999), at p. 11.

[17] Some may describe these as "counter-globalization" movements, but the connection between the use of information and technology (such as the Internet) by both sides, for example, is apparent. See, Robert O. Keohane and Joseph S. Nye, Jr., "Globalization: What's New? What's Not (And So What?)", Foreign Policy (2000).

[18] [Text missing.]

[19] Arif Dirlik, "Globalism and the Politics of Place", Development, vol. 41, No. 2 (June 1998), at p. 7.

[20] Ibid., at pp. 11-12.

[21] Thomas Waligren, "Political Semantics of Globalization: A Brief Note", in Development 42/2 (June 1998), at p. 32.

[22] Anne Orford, "Contesting Globalization: A Feminist Perspective on the Future of Human Rights" in Transnational Law and Contemporary Problems, vol. 8, No. 2 (1998), at p. 173.

[23] Cardoso, op. cit. at note 14, p. 5.

[24] See, for example, Organization for Economic Cooperation and Development, Open Markets Matter: The Benefits of Trade and Investment Liberalization (1998).

[25] The Special Rapporteurs extensively examined this issue in their report presented at the fifty-first session of the Sub-Commission (see E/CN.4/Sub.2/1999/8).

[26] Lourdes Benería and Amy Lind, "Engendering International Trade: Concepts, Policy and Action".

[27] See Yash Tandon, Globalization and Africa's Options, International South Group Network, Harare, 1999, at p. 11.

[28] See, Jackson, op. cit., at note 3, pp. 824-825.

[29] The General Agreement on Trade in Services (GATS), 15 April 1994. Reprinted in International Legal Materials, vol. 33, at p. 67.

[30] The Agreement on Trade Related Intellectual Property Rights (TRIPS), 15 April 1994, Annex 1C to the Marrakech Agreement. Reprinted in International Legal Materials, vol. 33, at p. 81.

[31] The Agreement on Government Procurement (AGP).

[32] The Agreement on Trade Related Investment Measures (TRIMS), 15 April 1994 in Law and Practice of the World Trade Organization, Treaties Booklet 1, Release 95-1, at 161 (Joseph F. Denin, ed.), 1995.

[33] See Jackson op. cit., at note 3, p. 825.

[34] Joseph F. Stiglitz, "Trade and the Developing World: A New Agenda", Current History (November 1999), at p. 387.

[35] See Barry Coates, "Why Free Trade is A Myth", The Independent, London, 10 October 1999.

[36] Ahmed Mohiddin, "Partnership: A new buzz-word or realistic relationship?" Development, vol. 41, No. 4 (1997) at p. 7.

[37] As Robert Howse and Makau Mutua have pointed out, the preamble to the WTO Agreement only refers to the raising of "standards of living" and not explicitly to human rights. See, Robert Howse and Makau Mutua, Trading in Human Rights: The Human Rights Obligations of the World Trade Organization, ICHRRD (April 2000), at p. 13.

[38] For a good analysis, see Yash Tandon, "The World Trade Organization and Africa's Marginalization", Australian Journal of International Affairs, vol. 53, No. 1 (1999), at pp. 83-94.

[39] Myriam Vander Stichelle, Trade Policy, the WTO and Gender (Information Paper of the Informal Working Group on Gender and Trade, November 1998), esp. pp. 16-20.

[40] Gerry Helleiner and Ademola Oyejide, "Global Economic Governance, Global Negotiations and the Developing Countries", in UNDP, Globalization with a Human Face: Background Papers to the Human Development Report 1999, at p. 112.

[41] Anne-Christine Habbard and Marie Guirand, The WTO and Human Rights, FIDH Position Paper (November 1999), accessed on 14 May 2000.

[42] The Organization for African Unity (OAU) issued a statement that mainly condemned the processual aspects of the meeting, using words such as a "lack of transparency" and the "marginalization" of African countries: "We are particularly concerned over the stated intentions to produce a ministerial text at any cost including at the cost of procedures designed to secure participation and consensus". See, "Africa Rejects WTO Deal" (AFP), reported in the The New Vision, Kampala, 4 December 1999, at p. 31.

[43] "WTO Talks End in Failure" (AFP), reported in The New Vision, Kampala, 6 December 1999, at p. 61.

[44] As Baker Wairama points out, a country like Uganda has only a single trade representative at the WTO headquarters in Geneva compared to an average of seven from each OECD country, supported by a coterie of aides. Baker G. Wairama, "Impact of the World Trade Organization (WTO) on Uganda", paper presented to a Uganda Law Society conference on International Trade Law and Uganda: Closing the Gaps, Kampala, April 2000, at p. 4.

[45] Havana Declaration of the G-77 South Summit, 14 April 2000 (accessed on 6 May 2000 at http://www.g77.org.).

[46] This was implicit in a veiled attack made by World Bank President James Wolfenson on the conditionality strategies applied by the Fund. See, Stephany Griffith-Jones and José Antonio-Ocampo, The Poorest Countries and the Emerging International Financial Infrastructure, Almqvist and Wiksell International, Stockholm, 1999, at p. 56.

[47] At Seattle, Secretary-General Kofi Annan issued the same message to the trade ministers, stating:

> "... globalization must not be used as a scapegoat for domestic policy failures. The industrialized world must not try to solve its own problems at the expense of the poor. It seldom makes sense to use trade restrictions to tackle problems whose origins lie not in international policy. By aggravating poverty and obstructing development, such restrictions often make the problems they are trying to solve even worse."

Kofi Annan, "Globalization - No Excuse for Domestic Failures", The East African, 6-12 December 1999, at p. 12.

[48] One such area is the issue of labour rights which the International Confederation of Free Trade Unions (ICFTU) and the American Confederation of Labour - Congress of Industrial Organization (AFL-CIO) are pushing to have included in WTO. However, as Walden Bello has argued, such a strategy is deeply flawed for a number of reasons:

> "First, by pursuing this objective through the WTO the IFCTU is conferring legitimacy on an international economic system which - at every other turn - squeezes and exploits workers. Second, it disregards the fact that many of the WTO agreements prohibit or restrict the power of national governments to implement policies which would improve the conditions for the mass of workers, especially those in the agricultural sector who comprise 59 per cent of the workforce in the Third World. Finally, and critically, it completely ignores the decisive role of footloose capital in keeping wages low and pitting worker against worker."

Nicola Bullard, "It's time for 'uncivil' society to act", Focus on Trade, No. 47 (March 2000, accessed at: http://www.focusweb.org).

[49] See Krysti Justine Guest, "Exploitation Under Erasure: Economic, Social and Cultural Rights Engage Economic Globalization", Adelaide Law Review, vol. 19, No. 1 (1997), at p. 81.

[50] Vandana Shiva, "Intellectual Property Rights and Bioethics", paper presented at El Taller: International Conference and General Assembly on "The New Millennium: Globalization and its Challenges", Tunis, 12-16 November 1998 (on file with author).

[51] There are numerous other problems associated with the issue of intellectual property in WTO, including the potential impact on agriculture and health services. See the report by Dagi Kimani, "Intellectual Property Bill Faces Opposition", The East African, 29 May-4 June 2000, at p. 7.

[52] Stiglitz, op. cit. at note 34, p. 387.

[53] International Centre for Trade and Sustainable Development (ICSTD), "Quad Offers Weak Starting Point for Confidence-building Package", in Bridges: Between Trade and Sustainable Development, Year 4, No. 3 (April 2000), at p. 2.

[54] See, Andrew L. Strauss, "From GATTzilla to the Green Giant: Winning the Environmental Battle for the Soul of the World Trade Organization", University of Pennsylvania Journal of International Economic Law, vol. 19, No. 3 (1998), p. 729.

[55] Needless to say, the Bank still has its critics. Writing in The Guardian, George Monbiot states:

> "Every one of the bank's policies is beset by contradictions. It claims, for example, to be the champion of free choice, yet its prescriptions are resolutely Maoist. It promulgates precisely the same approach to development everywhere on earth, regardless of circumstance. It rules not by science but by slogan: the great leap forward will be achieved by means of 'comparative advantage', 'privatization', and 'trade liberalization'. It keeps pursuing its crazy schemes even in the face of repeated failure ...".

See, George Monbiot, "World Bank Promotes Poverty", The New Vision, 16 April 2000, at p. 6.

[56] See Cord Jakobeit, "The World Bank and Human Development: Washington's New Strategic Approach", Development and Cooperation, No. 6 of 1999, at p. 4.

[57] See International Bank for Reconstruction and Development/World Bank, Development and Human Rights: The Role of the World Bank (1998).

[58] See, Shalmali Guttal, "The Many Uses of Poverty", Focus on Trade, No. 50 (May 2000). In the case of Uganda - one of the first beneficiaries of the HIPC initiative - it appears that the Bank has now introduced new conditionalities after the Government met all those initially set. The Uganda Debt Network (the local branch of the Jubilee 2000 campaign) referred to the introduction of the new conditionalities as a "shifting of the goal posts". Uganda Debt Network, "Open Letter on Debt Relief for Uganda", 19 May 2000.

[59] "Who will stand up to IMF for reform?" (German Newspaper News Service), The New Vision, 27 September 1999, at p. 12.

[60] International Monetary Fund, Good Governance: The IMF's Role, 2 July 1997 (accessed on 10 March 2000 at: http://www.imf.htm).

[61] Ibid., preamble at p. 1.

[62] Ibid., para. 6.

[63] The impasse ended when the United States agreed to support Europe's second candidate, Horst Koehler - the former head of Eastern European Development Bank. See, "International Monetary Fund Race Appears Over After US Endorsement", Business Recorder, 15 March 2000 (accessed on 27 May 2000 at: http://www.brecorder.com/story/S00SDC15/SDC15172.htm).

[64] See Helleiner and Oyejide, op.cit. at note 40, p. 111.

[65] Greg Mills, "The Future of Globalization", in South African Journal of International Affairs, vol. 6, No. 1 (1998), at p. 83.

[66] For an analysis of the interests involved and of the role of the IMF, see Walden Bello, "Speculations, Spins and Sinking Fortunes", Development Dialogue (1998: 1), p. 42.

[67] See IMF, Annual Report 1997, esp. pp. 59-60.

[68] See International Monetary Fund: Hearings Before the Sub-Commission on General Oversight and Investigations of the House Committee on Banking and Financial Services, 105th Congress (1998), at p. 5. See also, David Katona, "Challenging the Global Structure through Self-determination: An African Perspective", American University International Law Review, vol. 14, No. 6 (1998), at pp. 1458-1462.

[69] For example, the Fund appointed a team led by John Crow - the former head of the Bank of Canada - to analyse its operations last year. In a report that was issued just before its annual meeting towards the end of 1999, the IMF was accused of "... failing to anticipate crisis spots in the international economy, setting the wrong priorities in its efforts to tackle economic problems around the world, and failing to reform a bureaucratic culture where employees are often afraid to speak out or strongly express their own view". "IMF Now Under Fire" (German Newspaper Service), The New Vision, 28 September 1999, at p. 10.

[70] Thus, First Deputy Managing Director of the Fund Stanley Fischer could offer the following counsel to the people of Bulgaria: "... for now the transition process may feel as though it is all effort and no reward. But other countries have been through the same adjustment pains and emerged stronger and better off in the end." See, "The Lessons of Reform - Ten Years On", (accessed on 27 May 2000 at: http://www.imf.org/external/np/speeches/2000/052500.htm).

[71] See, Joseph Stiglitz, "The Insider: What I Learned at the World Economic Crisis", The New Republic (online), 17 April 2000 (accessed on 2 May 2000 at: http://www.thenewrepublic.com/041700/stiglitz041700.html).

[72] Gordon Smith and Moisés Naim, Altered States: Globalization, Sovereignty and Governance, Ottawa, International Development Research Council, 2000, at p. 17.

[73] Louis Uchitelle, "World Bank Economist Felt He Had to Silence Criticism or Quit", New York Times, 2 December 1999 (accessed on 16 April 2000 at: http://www.globalpolicy.org/socecon/bwi-wto/stiglitz2.htm).

[74] Smith and Naím, op. cit., note 712, at p. 43.

[75] Jan Arte Scholte, "Globalization, Governance and Democracy in Post-Communist Romania", Democratization, vol. 5, No. 4, at pp. 66-67.

[76] Bridget Anderson, Britain's Secret Slaves: An Investigation into the Plight of Overseas Domestic Workers, Anti-Slavery Society, London, 1993.

[77] Ibid., at p. 71.

[78] See Terri Judd, "Dead Man Thought Racism was Routine", The Independent, London, 3 November 1999, at p. 4.

[79] See Guest, op. cit., note 49, at pp. 79-82.

[80] Stephen Small, "Racism, Black People, and the City in Britain", in Globalization and Survival in the Black Diaspora: The New Urban Challenge (Charles Green, ed.), State University of New York Press, Albany, 1997.

[81] For example, it is only very recently that an individual complaints mechanism for women has been incorporated into the CEDAW mechanism.

[82] United Nations, 1999 World Survey on the Role of Women in Development: Globalization, Gender and Work, (United Nations Publication, Sales No. E.99.IV.8) at p. 9.

[83] Ibid., p. 8, note 23.

[84] One estimate states that of the 27 million people employed in EPZs worldwide, a phenomenal 90 per cent are women. See, John Hilary, Globalization and Employment: New Opportunities, Real Threats (Panos Briefing No. 33, May 1999) at p. 1.

[85] UNDP, *supra* note 7, at p. 14.

[86] Riham el-Lakany, WTO Trades off Women's Rights for Bigger Profits, Women's Environment and Development Organization (News & Views), vol. 12, Nos. 2 and 3 (November 1999) at p. 1.

[87] Ibid., p. 11.

[88] Ibid., p. 10.

[89] Ibid., p. 14, and Lin Lean Lim, More and Better Jobs for Women: An Action Guide, ILO, Geneva, 1999, pp. 19-20.

[90] The role of employment and work in poverty eradication: the empowerment and advancement of women: report of the Secretary-General (18 May 1999) (E/1999/53).

[91] Lim, op. cit. at note 89, pp. 19-20.

[92] Ibid., pp. 30-31.

[93] See Deborah Spar and David Yoffie, "Multinational Enterprises and the Prospects for Justice", in Journal of International Affairs (Spring 1999), vol. 52, No. 2, p. 557.

[94] United Nations, op. cit., at note 82 at p. 10.

[95] Lim, op. cit. at note 89 p. 31.

[96] Ibid., Box 1, p. 11.

[97] Laurie Nicole Robinson, "The Globalization of Female Child Prostitution: A Call for Reintegration and Recovery Measures Via Article 39 of the United Nations Convention on the Rights of the Child", Indiana Journal of Global Legal Studies, vol. 5, No. 1 (1997), p. 239.

[98] Ibid. at pp. 31-32.

[99] United Nations, op. cit., at note 82, pp. 11-12.

[100] Food and Agriculture Organization of the United Nations, Rural Women and Food Security: Current Situation and Perspectives, 1998, pp. 43-44.

[101] See supra note 90, paras. 19-21.

[102] United Nations, op. cit. at note 82, pp. 15-16.

[103] Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations Publication, Sales No. E.96.IV.13), chap. I, resolution 1. Strategic Objective A. 1, pp. 40-44.

[104] See supra note 90, paras. 48-49 (emphasis ours).

[105] Ibid., paras. 58-62.

[106] A/CONF.157/24(Part I), chap. III. para. 5.

[107] See Charter of the United Nations (1945), Preamble, Article 1 and Article 55.

[108] Ibid., Articles 55 and 56 read together.

[109] Ibid., Article 28.

[110] Ibid., Article 30.

[111] Report of the Human Rights Committee, Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40, (A/37/40) (1982), annex V.

[112] See also Dominic McGoldrick, The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights, Clarendon Press, 1991, pp. 329-330.

[113] General Comment No. 3 (1990), Committee on Economic, Social and Cultural Rights, Report on the Fifth Session, Economic and Social Council, Official Records 1991, Supplement No. 3 (E/1991/23-E/C.12/1990/8), annex III.

[114] Maastricht Guidelines, clause 6.

[115] Ibid., clause 11; Limburg Principles, clauses 70-72.

[116] Maastricht Guidelines, clauses 14 and 15.

[117] Ibid., clause 9.

[118] Ibid.

[119] Limburg Principles, clauses 25-28. Maastricht Guidelines, clause 10.

[120] Maastricht Guidelines, clause 18.

[121] Article 1 in both the ICESCR and the ICCPR.

[122] General Assembly resolution 1803 (XVII) of 14 December 1962.

[123] See Janelle Diller and David Levy, "Child Labour, Trade and Investment: Toward the Harmonization of International Law", American Journal of International Law, vol. 91, No. 4 (1997), at p. 678.

[124] Declaration on the Right to Development, General Assembly resolution 41/128 of 4 December 1986, article 1.

[125] Ibid., article 2.

[126] Ibid., preamble and article 1.

[127] Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995 (United Nations publication, Sales No. E.96.IV.8), chap. I, resolution 1, annex I and II.

[128] See e.g. the final report prepared by Mr. José Bengoa, Special Rapporteur, on the relationship between the enjoyment of human rights, in particular, economic, social and cultural rights, and income distribution, (E/CN.4/Sub.2/1997/9 and E/CN.4/Sub.2/1998/8).

[129] See supra note 127, annex I, para. 14, (emphasis ours).

[130] Reproduced in International Human Rights Reports, vol. 6, No. 4 (1999), p. 1176.

[131] The concern of the Committee about globalization has continued, and recently led to a meeting between the Committee and activist organizations on the subject of globalization during the Committee's May 2000 session. See, The role of the Committee on Economic, Social and Cultural Rights in a globalizing economy (meeting on 6 May 2000 at Palais Wilson).

[132] Universal Declaration of Human Rights, preamble.

[133] Comment on the Seattle meeting by the United Nations High Commissioner for Human Rights. Also preface by the High Commissioner to Business and Human Rights - A Progress Report, 1999.

[134] The issue of structural adjustment - today regarded as one of the essential ingredients of the processes of globalization - has concerned United Nations agencies for a long time. See, United Nations Economic Commission for Africa, African Alternative Framework to Structural Adjustment Programmes for Socio-economic Recovery and Transformation (AAF-SAP), E/ECA/CM.15/6/Rev.3 (1989).

[135] See, e.g., Deputy Secretary-General says fight against poverty emerging as one of greatest challenges of the times, press release, ECOSOC/5877 (28 October 1999), Economic and Social Council debates benefits and disadvantages of globalization of world economy, press release, ECOSOC/5704 (2 July 1997).

[136] By decision 1999/102 of the Sub-Commission.

[137] Resolution 1999/10 of the Sub-Commission.

[138] Statement by the Committee on Economic, Social and Cultural Rights on globalization and economic, social and cultural rights (May 1998).

[139] Statement of the United Nations Committee on Economic, Social and Cultural Rights to the Third Ministerial Conference of the World Trade Organization (Seattle, 30 November to 3 December 1999) (E/C.12/1999/9) (26 November 1999), para. 6.

[140] Ibid., para. 3.

[141] General Comment No. 12 (1999). The right to adequate food, Committee on Economic, Social and Cultural Rights, Report on the twentieth and twenty-first Sessions, Economic and Social Council Official Records 2000, supplement No. 2, annex V.

[142] Ibid., para. 20.

[143] Ibid., para. 41.

[144] See, e.g., concluding observations of the CEDAW on periodic reports of Argentina and Italy considered at its seventeenth session, Report of the Committee on the Elimination of Discrimination against Women (sixteenth and seventeenth sessions) Official Records of the General Assembly, fifty-second session, supplement No. 38 (A/52/38/Rev.1), paras. 295 and 345 respectively. See also, Committee on the Rights of the Child, Report on the twentieth session (CRC/C/84) (5 March 1999), paras. 211-213, which records a marginal statement made by a representative of the IMF at the session acknowledging the link between child rights and a stable macroeconomic environment.

[145] The same realization is what lies at the core of the Copenhagen Declaration and Programme of Action adopted at the World Summit for Social Development in 1995, op. cit. at note 127.

[146] United Nations Development Programme, Human Development Report, 1999, Oxford University Press, 1999, chapter 4.

[147] Ibid., chapter 5.

[148] See generally, Hugo Stoke, "From Norm to Action: Standard-setting and Technical Cooperation in the Field of Child Labour", in Human Rights in Development, 1998 and Michèle Jackson, "A New Convention to Eliminate the Economic Exploitation of Children", Tribune des droits humains, vol. 6, No. 3 (1999), p. 36.

[149] Michel Hansenne, "Globalization, Liberalization and Social Justice: Challenges for the International Community", public address by the former Director-General of ILO, accessed on 20 May 2000 at: http://www.ilo.org.

[150] UNCTAD has conducted numerous studies - some of them path breaking - that have raised serious questions about the so-called Washington Consensus. The organization is also recognized for having produced the most lucid examination of the Asian crisis and of offering a cogent response to it. See, for example, UNCTAD, Globalization and Liberalization: Effects of International Economic Relations on Poverty, (UNCTAD/ECDC/PA/4/Rev.1), 1996.

[151] See "UNCTAD X: Pies, preachers and poets", Focus on Trade, No. 46 (February 2000).

[152] See, Walden Bello, "UNCTAD X: An Opportunity Lost?", Focus on Trade, No. 46 (February 2000).

[153] See further Elena Mancusi-Materi, "Review of Development Approaches of UN Agencies", Development, vol. 42, No. 3 (1999), pp. 97-99.

[154] See "Good Intentions That Paved the Way to Arsenic Hell", Development and Cooperation, No. 6 of 1999, at p. 29.

[155] Statement by the Committee on Economic, Social and Culture Rights on Globalization, op. cit., at note 130, p. 2.

[156] See Joshua Karliner, "Co-opting the UN", The Ecologist, vol. 29, No. 5 (1999), at p. 318.

[157] Those problems are clear, for example, with the links (variously described as "dialogue" or "partnership") between the United Nations and the MLIs, such as the Bank and the Fund. A review of the last report of the meeting between the Bank and the United Nations demonstrates that human rights issues did not even feature on the agenda. See, "World Bank, United Nations Enhance Partnership", World Bank News Release, 15 March 2000.

[158] Vandana Shiva, op. cit., at note 6.

[159] Obviously, many others share the same view, including the United States Congress, former Bank and Fund employees like Joseph Stiglitz and Barber Conable and (since the Seattle and Washington protests) the media. See, the Report of the United States Congressional International Financial Institution Advisory Commission, Washington, D.C., February 2000, and Ron Scherer and Neil Irwin, "Blueprints for Redesigning the World Bank", Christian Science Monitor, 17 April 2000 (accessed on 15 May 2000 at: http://www.globalpolicy.org/socecon/bwi-wto/wbank/reform3.htm).

[160] David Slater, "The Spacialities of Democratization in Global Times", Development, vol. 41, No. 2 (June 1998), pp. 20-29, esp. p. 27.